IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.8675 OF 2003

Smt. Sumedha Sanjay Joshi ..Petitioner

Vs.

The Union of India & Ors. ..Respondents

Mr.G.S.Godbole & Mr. U.T. Naik for Petitioner
Mr.Y.K.Mishra with Mr. D.A.Dubey for Respondent No.1.
Mr. M.D. Sindia with Mr. G.G.Suri i/b. M/s. Rustamji & Ginawala for Respondent No.2.
Mr. C.R. Sonawane, A.G.P. for Respondent Nos.3 & 4

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 3RD MARCH, 2005.

P.C.

. Rule. Heard forthwith.

. The Petitioner belongs to a Scheduled Tribe. Respondent no.2 had advertised for a L.P.G. Dealership. Selection Committee prepared the merit list in which respondent no.5 was placed at serial No.1 and Petitioner at serial no.2 by the report on 24th April, 2001. Pursuant to Respondent no.5 appearing at no.1 of the merit list he was given the agency. A complaint was thereafter received by the Respondent No.2, that Respondent no.5 did not belong to Scheduled Tribe. The matter was referred to a Verification Committee. The Verification Committee on scrutiny found Respondent No.5 as not belonging to Scheduled Tribe. That decision is dated 30th

June, 2003. Respondent No.5 there after preferred a Petition before this Court. That Petition by order dated 6th December, 2004 in Writ Petition No.569 of 2004 was dismissed. Respondent No.5 preferred S.L.P. which has been dismissed by the Apex Court on 28th February, 2005 during the pendency of this Petition.

3. The case of the Petitioner is that on the rejection of the Tribe claim of Respondent no.5 she ought to have been considered and granted the dealership. Accordingly a legal notice was served on behalf of her by her Advocate. Respondent No.2 replied by their letter dated 29th October, 2003 replied to the Petitioner's Advocate Notice, and informed that action will be initiated against Respondent No.5. It was however, pointed out that even on termination of dealership of Respondent No.5, the Petitioner is not beneficiary. As the Respondent No.2 declined to grant dealership to the Petitioner, Petitioner approached this Court and has sought various reliefs including by way of a direction of mandamus directing Respondent No.2 to award the dealership/distribution of L.P.G. at Mumbra in favour of the Petitioner.

4. Respondent No.2 has filed an affidavit in reply of one K. Subramanian, Senior Regional

Manager. In the said affidavit it is set out that as per the Oil Industry Manual on the policy guide-lines pertaining to the selection of Dealers/Distributors, the validity of panel ceases to exist once the concerned dealership/distributorship is commissioned and as the Panel no longer subsists, the Petitioner is not entitled to claim the dealership as the old panel prepared by dealership selection board ceases to exist. The dealership would be once again advertised whenever new dealership/distributorship is to be commissioned. The Petitioner is free to apply as and when advertised.

5. A rejoinder has been filed on behalf of the Petitioner wherein reference has been made to clause 17.2 of the existing guide lines. Clause 17.2 provides that the merit panel will be valid for a period of one year from the date of commencing of the dealership. If within this period the dealership offered to the candidate is withdrawn for any reason of what so ever nature or the dealership terminated on account of wrong statement made in the application or any other reason like enlighten after due to complaint etc. of the dealership of Oil Company will have the option of allotting the dealership to the next candidate in the merit list,

6. The case of the Petitioner is that the dealership of the Respondent No.5 commenced on 27th March, 2002 and the complaint was filed by the Petitioner on 19th April,2002.

. Considering the above the question is whether the Petitioner is entitled to the relief as prayed for. We may first deal with the contention advanced on behalf of the Respondent No.2 that as the Panel no longer survives after commissioning of the dealership Petitioner is not entitled for the same. The argument could be appreciated and accepted, if the dealership was cancelled for reasons other than playing fraud on Respondent.2. Fraud vitiates every action and makes the order awarding dealership of Respondent No.2 null and void. In the instant case admittedly the Respondent No.5 if he did not belong to the Scheduled Tribe was not eligible to apply. Inspite of that be applied and was selected and the dealership was awarded to him. The Tribe Committee rejected his claim of Scheduled Tribe on a complaint lodged by the Petitioner. In these circumstances we are clearly of the opinion that the normal exercise of power cannot apply to the facts of this case. Even if in the meantime the procedure has changed, reservation for Scheduled Tribes has not been abolished and continues. Once that is the case we see no reason

why the Petitioner who was at Serial No.2 and on disqualification of Respondent No.5 would be at serial no.1 should be denied the dealership because of the fraud played by Respondent no.5 on Respondent no.2. In our opinion there can be no reason nor has any other legal provision been shown to us, apart from the policy guide-lines which disables Respondent no.2 from awarding the dealership to the second candidate in the list. We proceed on the footing that the new guide-lines relied on the Petitioner are not applicable to the selection done before the new guide-lines had come into force.

7. As we have held the Respondent No.5 had practiced fraud on Respondent no.2 in getting the dealership the entire action of granting the dealership to Respondent No.5 stands vitiated. The Panel as prepared by the Selection Board consequently will not cease to exist, but will subsist. The delay on account of legal procedure for verification and pendency of the matter before this Court or before the Apex Court cannot result in denial of the legitimate right and expectation of the Petitioner who otherwise is eligible.

8. For all the above said reasons after verification, we direct Respondent no.2 after following the due procedure to grant the dealership

to the Petitioner if the Petitioner meets the other requirements. Rule made absolute accordingly. No order as to costs.

. The entire exercise is to be completed within a period of 12 weeks from today.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)